UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

RALPH PLUMMER, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	*Civil No. 90-0048 P*
	)	
FIDELITY & CASUALTY INSURANCE CO., et al.,	)	
	)	
	)	
Defendants	)	

MEMORANDUM DECISION ON STATE DEFENDANTS' MOTION TO DISMISS [1]

In this action the plaintiffs, a former workers' compensation recipient who is now incarcerated and his wife, claim that a Maine statute which prohibits the payment of workers' compensation benefits to persons incarcerated (unless such persons are injured while working under certain specified employment arrangements) violates their equal protection rights under the United States and Maine constitutions. The plaintiffs have named as defendants the workers' compensation insurer for plaintiff prisoner's former employer and the chief administrator of the Maine Workers' Compensation Commission. The State of Maine moved for and was granted intervenor status as a party defendant. Before the court is the State defendants' motion to dismiss for failure to state a claim upon which relief can be granted.

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[1] Pursuant to 28 U.S.C. ' 636(c), the parties have consented to have United States Magistrate David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

On a motion to dismiss, the material factual allegations of the complaint must be taken as true, *Cooper v. Pate*, 378 U.S. 546 (1964), and interpreted in the light most favorable to the plaintiffs, *Roeder v. Alpha Indus., Inc.*, 814 F.2d 22, 25 (1st Cir. 1987). The motion may be granted ``only if, when viewed in this manner, the pleading shows no set of facts which could entitle plaintiff[s] to relief." *Gooley v. Mobil Oil Corp.*, 851 F.2d 513, 514 (1st Cir. 1988) (citing *Conley v. Gibson*, 355 U.S. 41, 45-48 (1957)). Applying these guidelines, the material facts for purposes of this motion are as follows: The plaintiff prisoner was injured at work on September 11, 1989 and as a result of that injury he is totally incapacitated. On September 22, 1989 the defendant insurance carrier commenced making workers' compensation payments for total incapacity. It terminated the plaintiff prisoner's benefits, in accordance with the mandate of 39 M.R.S.A. ' 102-A,[2] shortly after he began serving a term of two years at the South Windham Reformatory on October 5, 1989. The plaintiff wife and the plaintiffs'

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[2] This section provides:

> (1.) **Compensation while incarcerated.** No compensation for [total or partial incapacity] may be paid to any person during any period in which that person is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except in relation to compensable injuries suffered during incarceration and while the prisoner is:
>
> **A.** Employed by a private employer;
>
> **B.** Participating in a work release program; or
>
> **C.** Sentenced to imprisonment with intensive supervision under Title 17-A, section 1261.
>
> (2.) **Compensation forfeited.** All compensation which is not payable under subsection 1 is forfeited.

39 M.R.S.A. ' 102-A.

two children have been without income since October 5, 1989. Their only source of funds has been general assistance benefits from the Town of Cumberland.

The plaintiffs claim that ' 102-A creates two classification schemes each of which is without any rational basis. They challenge the rationality of the following classification schemes: (1) the class of ``persons who *solely* because they are totally incapacitated receive weekly benefits for their incapacity without regard to whether they are available for any type of employment," as compared with a ``second class consist[ing] of persons, also totally incapacitated, who solely because they are incarcerated do not [receive such benefits]"; and (2) the class of totally incapacitated prisoners injured on the job while in prison and therefore eligible for benefits, as compared with those injured on the job before being sentenced to prison and who are therefore ineligible to receive workers' compensation benefits. Complaint & 13 (emphasis in original).

Where a challenged statute does not burden a suspect class or a fundamental interest, it is not violative of the equal protection clause of the United States Constitution if the classification scheme is rationally related to a legitimate state interest. *City of New Orleans v. Dukes*, 427 U.S. 297, 303-04 (1976); *see also Pennell v. City of San Jose*, 485 U.S. 1, 14 (1987). The Supreme Court has held that social and economic legislation ```carries with it a presumption of rationality that can only be overcome by a clear showing of arbitrariness and irrationality.'" *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 462 (1988) (quoting *Hodel v. Indiana*, 452 U.S. 314, 331-32 (1981)). Workers' compensation statutes generally fit within the rubric of social and economic legislation. *See, e.g., Veronie v. Garcia*, 878 F.2d 347, 350 (10th Cir. 1989).

The complaint asserts no implication of a fundamental right or suspect class. Rather, it asserts that each of the classification schemes created by the statute is without any rational basis. Complaint & 14. The legislation must, therefore, be upheld if there is a rational basis for the statutory

distinctions. The State defendants assert that the legislature could have rationally concluded that, because prisoners by virtue of their incarceration ordinarily lose wages, injured prisoners are no more entitled to receive compensation than are uninjured prisoners. In addition, they argue that because the state is providing food, medical care, shelter and other benefits to an incarcerated prisoner, *see* 34-A M.R.S.A. ' 3031, the legislature could rationally conclude that workers' compensation payments should be eliminated to prevent the prisoner from receiving double benefits. The plaintiffs, on the other hand, assert that the ``double benefits" rationale does not provide a reasonable basis for the statute's classification scheme because it is the private insurers' funds rather than public resources which are saved as a result of the legislation. This argument fails. The plaintiffs may have provided a justification for alternative legislation, but they have not demonstrated any arbitrariness or irrationality in the legislature's chosen policy.[3]

In defense of the second classification attacked by the plaintiffs, the State defendants assert that, while initially prisoners lose their wages and earning capacity by virtue of their incarceration, some prisoners become eligible (1) to be employed by a private employer, (2) to participate in a work-release program or (3) are sentenced to imprisonment at home with intensive supervision. If a prisoner participating in such a program is injured, the State defendants further argue, it is not irrational to allow

[3] I note in this regard that ' 102-A was enacted as part of a comprehensive reform of Maine's workers' compensation law aimed at saving the private insurance market for workers' compensation at a time when most workers' compensation carriers were withdrawing from the business in Maine. P.L. 1987, ch. 559, emergency preamble. The legislature could rationally decide that the prevention of double benefits to prisoners as well as ``saving the private insurance market for workers' compensation, without which employers cannot operate," *id.*, both serve the public interest.

them to obtain workers' compensation since the loss of wages would result from the injury rather than from incarceration. Additional legitimate reasons for allowing workers' compensation for injuries received by prisoners in the course of their prison employment include the reduction in court costs for claims by prisoners for such injuries, reduction of public costs to support incapacitated ex-inmates, reduction of recidivism and encouragement of maximum employer safety. *See* Note, *The Prisoner's Paradox: Forced Labor and Uncompensated Injuries*, 10 New Eng.J. on Crim. & Civ. Confinement 123, 136-38 (1984); *see also* Note, *A Time for Recognition: Extending Workmen's Compensation Coverage to Inmates*, 61 N.D.L. Rev. 403, 413-24 (1985); 1C A. Larson, *Workmen's Compensation Law* ' 47.31(e) (1986) (criticizing denial of compensation to prisoners who are injured at work during term of incarceration because such prisoners are exposed to all risks of ordinary employment and are burdened with effects of permanent disability after release).

Because the classifications created by 38 M.R.S.A. ' 102-A are rationally related to legitimate state purposes, I conclude that the plaintiffs' equal protection challenges are without merit.[4]

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[4] The plaintiffs also attack the constitutionality of the statute as it is applied to the plaintiff wife and the plaintiffs' children. The plaintiffs claim that the dependents of incarcerated workers who have been deemed incapacitated are treated differently from those of non-prisoners and that such disparate treatment is not rationally related to a legitimate state purpose. Plaintiff's Memorandum of Law in Support of Motion for Temporary Restraining Order and Preliminary Injunction (incorporated by reference into the plaintiffs' Memorandum of Law in Opposition to Motion by the State of Maine to Dismiss). The State defendants note in passing their belief that the plaintiff wife lacks standing, but they neither develop nor rely on this argument. I do not therefore address the standing question. *See Collins v. Marina-Martinez*, 894 F.2d 474, 481 n.9 (1st Cir. 1990). Assuming, without deciding, that the plaintiff wife has standing to challenge the constitutionality of the statute, I conclude that the same rationale applies to this argument as to the prisoner himself. The prisoner, whether or not he is injured, loses his income when he becomes incarcerated. The dependents of such injured or uninjured prisoners also lose their customary source of support. The Supreme Court has made clear that the equal protection clause is not violated ``merely because the classifications made by [a state's] laws are imperfect . . . [or] `in practice . . . result[] in some inequality.'" *Dandridge v. Williams*, 397 U.S. 471, 485 (1970) (quoting *Lindsey v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)). *See also Dallas v. Stanglin*, 490 U.S. ___, 104 L.Ed.2d 18, 26-27 (1989). The scope of inquiry is limited to determining whether the provision is rationally related to a legitimate state purpose. Because I have

Accordingly, the State defendants' motion to dismiss is ***GRANTED***. Since it has been determined that the plaintiffs' federal claim cannot withstand challenge, discretionary pendent jurisdiction over the state-law claim is declined and the action is ***DISMISSED*** *sua sponte* and without prejudice as to the remaining defendant.

Dated at Portland, Maine this 26th day of July, 1990.

David M. Cohen
United States Magistrate

already found this to be the case, the plaintiffs' argument must fail.